IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.:490 of 2005.

Decided on: 17.05.2007.

Himachal Pradesh Housing & Urban Development Authority.

… … … Petitioner.

Versus

Sh. Bansi Lal & Another.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **Mr. Chandranarayana Singh, Advocate.**

For the Respondents: **Ex-parte.**

Rajiv Sharma, Judge (Oral):

This petition has been filed against the order dated 29.11.2004 in application No.55 of 1999 passed by the H.P. Labour Court, Shimla.

The brief facts necessary for adjudication of this petition are that respondent No.1-workman (hereinafter referred to as the workman for convenience) had filed application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) before the H.P. Labour Court, Shimla vide Annexure P-1. The claim of the workman before the Labour Court as per

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Whether reporters of local papers may be allowed to see the judgment? Yes.

the averments made in the application was that though he had been working as Clerk, but was paid the wages of beldar and he was entitled to salary of a clerk on the principle of 'equal pay for equal work'.

The petitioner Authority had filed reply to the application preferred by the workman.

The Labour Court has passed order on 29.11.2002 and allowed the application preferred by the workman and the petitioner-Authority was directed to make payment of difference of wages of beldar and clerk to the workman as arrears of back wages for performing the duties of clerk within three months from 29th November, 2004 for the period 19th February, 1993 to 13th June, 2000. The workman was also held entitled to interest @ 9% per annum.

This Court has issued notice to the respondent-workman on 22.9.2005 and the implementation of order dated 29.11.2004 passed by the learned Presiding Judge, H.P. Labour Court, Shimla was stayed. The order dated 22.9.2005 was confirmed by this Court on 27.2.2006 and the workman was proceeded ex-parte.

The sole contention of Chandranarayana Singh appearing on behalf of the petitioner is that the Labour Court had no jurisdiction to entertain the application under Section 33-C(2) of the Industrial Disputes Act, 1947.

I have heard Mr. Chandranarayana Singh counsel for the petitioner.

I have gone through the pleadings of the parties and order dated 29.11.2004. I am of the opinion that the order dated 29.11.2004 is without jurisdiction. The Labour Court without a reference made by the State Government could not adjudicate upon the dispute whether the workman was discharging the same or similar duties as discharged by the Clerk with the petitioner-Authority under Section 33-C(2) of the Act. The Hon'ble Supreme Court has held in **Municipal Corporation of Delhi versus Ganesh Razak and Another (1995) 1 SCC 235** that the Labour Court has no jurisdiction to first decide the workman's entitlement and then proceed to compute the benefits so adjudicated on that basis in exercise of its powers under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution. Their Lordships of the Hon'ble Supreme Court have opined as under:-

> **"The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide**

> **the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution."**

In the present case, the claim of the workman to be paid wages at par with regularly appointed Clerks had not been earlier settled by adjudication. The plea of the workman that he was discharging the same and similar duties of the post of Clerk or on that basis was entitled to same salary on the principle of 'equal pay for equal work' was to be pre-adjudicated upon. In the present case there was no pre-adjudication of the entitlement of the workman and thus, the Labour Court could not entertain the application under Section 33-C(2) of the Act. The order passed by the Labour Court lacks jurisdiction and the same is liable to be quashed and set aside.

Accordingly, this petition is allowed and the order dated 29.11.2004 passed by the Labour Court, Shimla is quashed and set aside. There shall be no order as to costs.

May 17, 2007 **(Rajiv Sharma)**
(sck). **Judge**